

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

03/27/2002

CLERK OF THE COURT
FORM V000A

HONORABLE MICHAEL D. JONES

P. M. Espinoza
Deputy

CV 2001-019400

FILED: _____

ATLAS TRANSMISSION

ATLAS TRANSMISSION
4410 W ACOMA DR
GLENDALE AZ 85306-0000

v.

SABANS RENT A CAR

MATTHEW K LAVELLE

REMAND DESK CV-CCC
TOLLESON JUSTICE COURT

MINUTE ENTRY

This Court has jurisdiction of this appeal pursuant to the Arizona Constitution Article VI, Section 16, and A.R.S. Section 12-124(A).

This matter has been under advisement without oral argument and this Court has considered and reviewed the record of the proceedings from the Tolleson Justice Court, and the Memoranda submitted by the parties.

Plaintiff/Appellee, Atlas Transmission, filed a Complaint with the Small Claims Division of the Tolleson Justice Court on March 8, 2001 requesting reimbursement of \$2,500.00 for "customer refusing to pay for three repair orders totalling \$2,700.00." Defendant/Appellant, Sabans Rent-A-Car, filed an answer denying the claim and also a counter-claim on May 22, 2001, demanding \$5,000.00 for expenses incurred due to the defective work performed by Atlas Transmission. The case was

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transferred to the Civil Division of the Tolleson Justice Court for trial. The trial was held on September 27, 2001 and the court dismissed Appellant's counter-claim and granted judgment to Appellee in the total amount of \$2,970.00, which included \$40.00 for costs. Appellant has filed a timely Notice of Appeal in this case.

Appellant correctly complains that the trial court misunderstood Appellant's defense to the original complaint: material breach of the agreement by Appellee (Atlas Transmission). For some reason the trial court became concerned about a waiver of warranty by Appellant. The trial judge stated, "when you fail to take advantage of a warranty and you go to a separate vendor you essentially waive your warranty. You waive a claim to be compensated by the original vendor, you know?"¹ It does appear that the trial judge was confused about the application of warranty law to the defense posed by Appellant of material breach of the agreement.

IT IS THEREFORE ORDERED vacating the judgment of September 27, 2001 in its entirety.

IT IS FURTHER ORDERED remanding this matter back to the Tolleson Justice Court for a new trial on the original claim and counter-claim.

¹ R.T. of September 27, 2001, at page 52.
Docket Code 019